

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that I be allowed to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. Thank you.

OCCUPATIONAL AIR QUALITY TESTS IN COAL MINES

Mr. WELLSTONE. Mr. President, I rise today to call to the attention of colleagues a disturbing set of circumstances and facts which I believe merit investigation and probably legislative action on the part of the Senate. I also believe that the facts I am about to discuss warrant more attention than they have received so far from the Justice Department.

There is evidence of significant violation of Federal law leading to great harm. I hope that in addition to the Congress responding appropriately, the Justice Department might look further into this matter.

I am referring to what appears to be a record of widespread systematic cheating on occupational air quality tests by operators of many of our Nation's coal mines. This alleged cheating, of which there appears to be nearly incontrovertible evidence, apparently has led to much unnecessary suffering in thousands of American families. It likely also has led to the unnecessary death from black lung disease of thousands of American coal miners.

Unfortunately, I am not referring to conditions that existed early in this century, or even conditions of the 1950s or 1960s. I'm talking about circumstances of the 1970s, 1980s and 1990s. I'm talking about allegations related to existing conditions and practices in American coal mines today.

I ask unanimous consent, Mr. President, to have printed in the RECORD a series of articles that appeared in April of this year in the Louisville Courier-Journal.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

FROM THE EDITOR

For years, a quiet but deadly tragedy has been played out in the nation's underground coal mines.

Coal mine operators have known about it. The federal government has known about it.

And coal miners themselves have known about it.

The tragedy is that in 1998 black-lung disease still exists and hundreds of miners nationwide die of the disease each year because of cheating on air-quality tests.

Doctors have known for a century that coal dust causes black lung, which can be prevented through underground dust-control measures.

But 30 years after Congress placed strict limits on airborne dust and ordered mine operators to take periodic tests inside their mines, almost 1,500 miners die of black lung every year.

The Courier-Journal set out to find out why.

The answers were shocking.

In a year-long investigation that involved interviews with 255 working and retired miners and computer analysis of more than 7 million government records, The Courier-Journal found that, among other things:

Miners continue to breathe dangerous levels of coal dust because cheating on dust tests is rampant.

Most coal mines send the government air samples with so little dust that experts say they must be fraudulent.

Many mine operators—non-union mine operators in particular—don't comply because strict adherence to safety regulations is time-consuming, costly and cuts into profits.

The federal agency responsible for protecting miners ignored overwhelming evidence of cheating.

Nearly every miner interviewed said that cheating on dust tests is common and that many miners help operators falsify tests to protect their jobs.

And almost no coal miners qualify for black-lung benefits under Kentucky's new workers' compensation law.

Since publication of the series, Kentucky's attorney general has asked U.S. Attorney General Janet Reno to investigate why mine-safety officials have ignored evidence of cheating. And state lawmakers have called for a special session to adopt new legislation on workers' compensation.

This reprint includes the entire five-day series, supporting editorials, followups and a guest column by the top mine-safety official.

We think this piece of work represents outstanding public service journalism in the finest tradition of The Courier-Journal.

Mr. WELLSTONE. That is the newspaper of Louisville, KY.

This remarkable series of five articles, principally by a reporter named Gardiner Harris, is titled "Dust, Deception and Death." The series documents an apparent pattern of falsification of coal dust sampling tests by coal mine operators and it details the consequences of that dishonesty: unnecessary suffering and early death for American coal miners.

It is an extraordinary report. I do not believe it has received enough attention, although hearings have been taking place at the state level in Kentucky to look into the charges.

The paper conducted a year-long investigation. Hundreds of current and former miners were interviewed. More than 7 million government records were examined. Based on that research, the Courier-Journal's reporters concluded that cheating on air-quality tests in coal mines has contributed to great suffering and to a large number of deaths from black lung disease among American coal miners. Their reporting reveals that the Federal Government, at least until very recently, largely ignored readily observable indications of that cheating.

I do not draw absolute conclusions at this time from what is reported in the Courier-Journal. But I can say that what is reported in this series is consistent with what I saw and heard when

I visited with miners in Eastern Kentucky a year ago. I was told then that cheating goes on in the dust sampling program in American coal mines. And I heard from sick and dying miners and their families about the connection between coal-mine conditions and black lung disease—especially in non-union mines.

We in the Federal Government have a responsibility to these workers and their families. At the end of my statement, I will make some suggestions regarding actions I believe we should take in the Senate. And I hope that colleagues, as they become more aware of this situation, might add to those suggestions and help determine the most appropriate response to what I believe is a national shame.

The initial shame is that the suffering and death of thousands of Americans appears to be the direct result of systematic cheating on a government-monitored health-protection program. The deeper shame is that we in the Federal Government have had the opportunity to know it, yet so far we haven't done very much about it. Dedicated people in the appropriate Federal agency, the Mine Safety and Health Administration (MSHA), are beginning to address this problem. J. Davitt McAteer, who is the Assistant Secretary for MSHA, has begun during recent years to take a number of steps, and he has called for further steps beyond those he has taken. But we still are not doing enough.

Before I cite some details from the series, I would like to read a portion of the newspaper's editorial on this subject into the RECORD. This Louisville Courier-Journal editorial, printed on Sunday, April 19, is headlined, "Death and Denial." It begins as follows:

Coal is an outlaw industry. It is now, and it always has been. Coal is the closest thing to brute, unrepentant late 19th Century capitalism that we have left in American life. If you don't believe that, just consider the fact that ranks of miners choke to death every year because coal operators routinely cheat. They cheat on air-quality tests which could save lives. When they do that, they cheat workers of the years they would be able to spend with families and friends but for an early death from black lung. And this grotesque disease continues as the principal killer of coal miners, just as it has been for a half-century.

That is not the conclusion of some outside group of hostile critics of the coal industry. It is the editorial position of a major newspaper in the state of Kentucky, where that industry remains important to the economy. Let me recite the conclusion of that same editorial: "One-third of all the nation's underground mines get cited for excessive dust. And those are just the operations that are caught in the flawed, sporadic dust tests. Miners are more than exhausted with this continuing outrage. They're dying."

Mr. President, every article in this series warrants reading in its entirety. There are some sad and shocking quotes from former foremen in the

mines, as well as from miners themselves about their own roles in test falsification. There are heartbreaking profiles that illustrate the human consequences of this reality. Men who are suffocating to death, whose lungs are destroyed, who cannot even crawl up two steps at their home without stopping and gasping for breath. I hope Senators will read the story of Leslie Blevins, 45-year old former coal miner who is dying of silicosis, a form of black lung. I hope Senators will read the story of Terry Howard and his family. Terry died in 1995 of black lung disease. He was 45.

Let me try to summarize some of the series' important findings.

The first and most important conclusion of the series is that coal miners today continue to breathe hazardous amounts of coal dust because falsification of dust sampling is still widespread. In 1972, strict dust limits in coal mines went into effect. That was a result of the 1969 Federal Coal Mine Health and Safety Act. Today, under that Act, every two months, operators of underground coal mines have to test the air in the mines for dust. They use air pump machines attached to certain of the miners' belts to collect air samples. Then government laboratories weigh the amount of dust collected in those machines' plastic cassettes. Also, in addition to weighing the dust cassettes once they have been turned in, Federal government supervisors actually oversee the company-conducted testing on one occasion per year.

How is the Federal dust-sampling program working? Not very well. In fact, the dust-sampling program, crucial as it is, today is a big part of the problem. Numerous miners, former mine owners and managers told the *Courier-Journal* that the sampling is routinely falsified. "Most of the time, we just turn them off," one miner said of the machines. Many miners described how the pumps often were hung where the air was clear of dust, or placed in lunch buckets. Some are run outside the mines or not at all.

According to the newspaper's reporting, in 1997, at about half the nation's underground coal mines, at least 15 percent of the air samples taken were almost completely dust-free. It is virtually impossible for those tests to have been accurate, according to experts. Assistant Secretary McAteer, who I believe is an honorable man and is moving in the right direction in addressing the problem, told the paper that these samples are "inaccurate," "unfathomable," and "statistically impossible." In other words, Assistant Secretary McAteer was saying that those results were not accurate. They could not have been accurate. They indicated cheating. That was in 1997.

Cheating is reprehensible, of course. But what matters even more is the reason for the cheating. The paper's reporting provides compelling evidence that this widespread cheating is for the purpose of covering up the existence of

severely hazardous conditions—dusty conditions which exceed federally allowable levels and which are still causing black lung disease today. How can that be, one might ask? We put the law in place. We have an agency devoted to enforcing it. Surely the mine operating companies are not interested in endangering their workers. And yet they do.

It appears from the evidence that mine operators don't comply with the Federal dust-sampling program mainly because it would cost them time and money to do so. It is a sad and maddening observation, but it appears to be true. Furthermore, it apparently also is the case that the coal mine operating companies do not comply with the Federal dust sampling program today because up to this point they have had little to fear from the Federal Government when they cheat. Even when convictions have been obtained in cases of falsification of dust tests, penalties seem to have been light.

So far, the Federal Government has not been up to the job of protecting miners' health. MSHA appears over a period of years to have largely ignored readily available evidence that cheating was occurring. They are not ignoring it now, although I believe we need to make sure they are doing everything that is possible to do. Penalties for violations, as well as investigations and prosecutions, have been a largely ineffective deterrent. One-third of the mines are cited for dust-level violations, but the fines are generally small. For years average fines were about \$100, and even now the average fine is just a few hundred dollars. Those are for the violations which are caught—instances where the measurable dust exceeded allowable levels. The kind of cheating which is documented in the *Louisville series*, which is a separate issue, has gone largely unpunished because it has gone largely uncaught. Furthermore, even after miners have contracted one or more of the diseases which are known collectively as black lung disease, few are able to qualify for government benefits intended to relieve their plight.

The most important information in this series of articles is not only that American miners continue to suffer and die from black lung disease today. Many Senators are aware that, whereas we pledged as a nation to eliminate black lung disease 28 years ago, we still have not accomplished that goal. The Federal Government pays approximately \$1 billion annually for programs directly related to black lung diseases. States pay worker's compensation health benefits to miners with black lung disease. So we know that thousands of Americans suffer from black lung disease. The important information in this series, however, which would have been new and surprising to me had I not visited with coal miners in Eastern Kentucky last year, is information which I think should shock Members of the Senate. That information is that it appears

that the cheating on air-quality testing by coal mine operators, the falsification of coal dust sampling tests, continues to go on today on a widespread scale. That—if true, and it appears to be—is what we must acknowledge is a national disgrace.

What does this mean? It means that the cause of future suffering and dying is going on, unabated, in today's coal mines. Right now, today. We can talk about responsibility and accountability for dishonesty in the past, which has led to today's suffering. We should. We should investigate it thoroughly, and if federal laws have been broken, then we should prosecute. But if false sampling continues today, and if we allow it to go on, then we in the Senate are failing in our responsibility to protect thousands of American coal miners from serious health hazards while they are on the job. We literally would be encouraging through our inaction the continued exposure of miners to conditions and practices that we have every indication will condemn thousands of them to suffering and early death. We are responsible. We cannot allow coal operators to cause avoidable suffering and death. I say avoidable because suffering and death from black lung disease is avoidable. Coal can be mined profitably without subjecting miners to dirty conditions that will give them black lung disease.

Mr. President, we may not solve this problem during the remainder of this Congress. It will probably not be a simple matter, and we have only a few remaining legislative weeks. It cannot be solved overnight, even though every day that cheating occurs American miners are exposed to deadly levels of black-lung-causing coal dust. Nonetheless, we can do some things immediately. We should.

We should hold at least an initial hearing on the subject of the effectiveness, or the lack of effectiveness, of current Federal measures to eliminate black lung disease. Such a hearing should include testimony regarding the voluminous evidence presented in the *Louisville Courier-Journal series* indicating widespread cheating on dust sampling tests. It might take more than one hearing to get to the bottom of the problem, not to mention the best solutions to it. But there should be a hearing, and I have directed a request for such a hearing to the Chairman of the Labor Subcommittee on Public Health and Safety, Senator FRIST, as well as to that Subcommittee's Ranking Member, Senator KENNEDY. We need to call attention to the issue, and we need to send a signal to American miners and their families that we will meet our responsibility to learn the truth and protect their health and safety.

Second, we need to ensure that MSHA has sufficient resources to carry out more of their own dust sampling, as well as more monitoring of tests conducted by the coal mine operators. I hope when we consider the Labor-

HHS Appropriations bill that we will provide adequate funding to MSHA to do more testing. The companies have shown that they will not carry out accurate tests. At the same time, I do not believe that we should simply increase our own Federal spending and testing, and meanwhile take the companies off the hook. The companies should continue to test, as well, and they must be held thoroughly accountable for their results. A more rigorous testing and monitoring program by MSHA would both improve the reliability of the test results, and it would also help us identify more of the individuals and companies that are cheating on the tests and endangering the health of miners.

MSHA already has increased its spot-inspections of mines that have turned in tests with suspiciously low dust levels. The agency should go further, and they should have the resources to ensure they are able to go further. I believe Federal enforcement agencies should consider whether increased criminal and civil prosecution is warranted for what appears to be the systematic circumvention of the Mine Safety Act. By enforcement agencies I am referring to MSHA and the Department of Justice.

The number of criminal prosecutions has been low if the claims asserted in the Louisville newspaper series are correct. Between 1980 and early 1997, there were only 96 cases in which criminal charges were successfully brought by the Federal government for violations in the area of coal mine safety and health. That is 96 cases over a 16 year period, or about six a year. It is my understanding that very few, if any, even of that small number of successful prosecutions were for the kind of cheating documented in the newspaper series. If cheating on dust sampling, which endangers people's lives, is as widespread as has been alleged, then I believe current Justice Department prosecution has been less than it should be. I do not know if the problem has been at MSHA, or if the problem has been at the Department of Justice. It may be difficult to prove this cheating. It may be difficult to get miners to testify. But if what the series portrays is true, then we are simply not doing a good job of deterring these illegal practices—practices which are causing illness and death.

Finally, the Secretary of Labor last year proposed new rules governing implementation of the Black Lung Benefits Act—rules which to my knowledge still have not taken effect. This set of proposed revisions to the Black Lung Benefits Act is sound, justified and needed. It should be implemented. Only about 7.5 percent of Black Lung claims have been granted since the early 1980s, with nearly one-third of claims tied up in lengthy hearing and appeals processes. Litigation consumes almost half of the Black Lung Trust Fund's administrative expenses. The Department of Labor's new rules were published in the Federal Register in January of last

year, and they should be put into effect.

Mr. President, I will return to the floor to speak further about this issue before the year is over. I hope we can conduct a hearing in the Labor Committee. I hope we will provide adequate appropriations for the Mines Safety and Health Administration. And I hope we will do right for the safety and health of American miners. I intend to do all I can as a United States Senator to see that we do so. I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS, 1999

The Senate continued with the consideration of the bill.

UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. Mr. President, we have notified all Members that we would like to complete action on the transportation appropriations bill. I believe our managers are ready to move in that direction.

We have a list of amendments now that have been identified.

I ask unanimous consent that the following amendments be the only first-degree amendments in order to the pending transportation bill, and subject to relevant second-degree amendments:

Managers' amendments; Senator LOTT, three relevant amendments; Senator SHELBY, three relevant amendments; Senator FRIST, regarding cemeteries; Senator ABRAHAM, regarding name change, ITS; Senator SPECTER, regarding bond issue; Senator DEWINE, regarding Coast Guard; Senator MCCONNELL, regarding expedited review; Senator MCCAIN, regarding Amtrak bookkeeping; Senator LEAHY, regarding helicopters; Senator BYRD, two relevant amendments; Senator LEVIN, regarding commuter rail; Senator BUMPERS, relevant; Senator LAUTENBERG, relevant in three instances; Senator DASCHLE, three relevant amendments; Senator KERRY, one amendment on Amtrak; Senator FEINGOLD, relevant amendment; Senator JOHNSON, two relevant amendments; and Senator DURBIN, regarding smoking on international flights.

Mr. LAUTENBERG. And Gramm on drugs.

Mr. LOTT. And one last, Senator GRAMM possibly, one amendment regarding Coast Guard.

Mr. President, we deleted the Feingold relevant.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, while we have leadership on the floor, we have heard the list. That is now confined. I think we ought to get on with the business of getting it done. We could wrap this bill up in short order. There is a full agenda. The majority leader holds out a plum at the end of the ladder. The plum swings a week from Friday. This helps reach that goal.

I ask my colleagues if they want to get out of here on Friday—I know most of them would like to stay, but you will have to put up with us in getting out early.

Mr. LOTT. I thank the managers of this legislation. Senators SHELBY and LAUTENBERG are on the verge of setting a very commendable record. I ask that they quickly go through this list of amendments and dispose of them and, as soon as possible, identify any needed votes, get a time agreement on those votes, and get it done as quickly as possible. It would help us be prepared to move on to other appropriations bills and be able to get out of here as scheduled next Friday.

I yield the floor.

Mr. CHAFEE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. I know the hour is beginning to get late and Members would like to know what they can expect tonight. We do have a list of amendments that the managers are working on right now. I believe most of those are going to be resolved without the necessity of extended debate, or even a vote. We should know in another 15 minutes or so exactly what that would be. I hope there won't be more than one or two amendments that require some time.

Our intent would be to do those amendments that are necessary and final passage, and then Senator DASCHLE and I would like to go to the District of Columbia appropriations bill. Senator COATS and Senator LIEBERMAN have an amendment that they are prepared to debate tonight, discuss tonight, and we hope to have all debate on that and other amendments, but the vote on the amendments and final passage we would propose would be done then Monday night at 5 o'clock in order to accommodate one of the managers.

Tomorrow, while we will have a vote or two early in the morning, we will go to the credit union bill early in the morning. There are not expected to be